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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JACOB GLASSER, on Behalf of
Himself and All Others Similarly
Situating and On Behalf of the General
Public,

Plaintiff,

v.

VOLKSWAGEN OF AMERICA, INC.,
and DOES 1 through 100, inclusive,

Defendants.

Case No.: CV06-2562 ABC (JTLx)

CLASS ACTION

**[PROPOSED] ORDER AND
FINAL JUDGMENT PURSUANT
TO RULE 54(b), Fed. R. Civ. P.**

Judge: Honorable Audrey B. Collins
Crm: 680, Roybal Federal Bldg.

1 Having considered the Agreement of Settlement filed April 30, 2008,
2 including the exhibits annexed thereto (Docket No. 39) (the "Agreement"); the
3 Class Action Settlement Notice ("Notice") having been duly given in accordance
4 with the prior Order of this Court; having given preliminary approval of the
5 Settlement as fair and adequate and directing notice to the Class; and pursuant to
6 such notice a fairness hearing having been held on September 22, 2008 for the
7 purpose of determining whether the terms of the Agreement are fair, reasonable
8 and adequate and should be approved by the Court in full settlement of the above-
9 captioned Litigation; having heard the attorneys for the Parties in support of the
10 Agreement and having considered all objections submitted to the Court; and upon
11 all papers filed and proceedings had herein and otherwise being fully informed;
12 and good cause having been demonstrated to this Court's satisfaction under the
13 standards of applicable law and Federal Rules of Civil Procedure, in particular the
14 requirements of Rule 23, Fed. R. Civ. P. and the Court finding no just reason for
15 delay pursuant to Rule 54(b), Fed. R. Civ. P.:

16 It is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

17 1. This Court has jurisdiction to enter this Order and Final Judgment of
18 dismissal. The Court has jurisdiction over the subject matter of this action
19 ("Litigation") and over all Parties to the Litigation, including all Members of the
20 Class.

21 2. This Judgment hereby incorporates by reference the definitions in
22 the Agreement, and all terms used herein shall have the same meanings as set
23 forth in the Agreement.

24 3. The Court hereby approves the terms of the Agreement, which are
25 incorporated herein for all purposes, as fair, reasonable and adequate, with the
26 exception of attorneys' fees, costs, interest and expenses and incentive payment
27 issues reserved for later decision pursuant to the provisions of paragraphs 15 and
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1 16, *infra*, and the Order of this Court entered September 22, 2008 (Docket No.
2 58).

3 4. The Court finds, for purposes of implementation of the Agreement
4 only, as follows: the Class defined in paragraph 8 below is so numerous that
5 joinder of all members is impracticable; there are questions of law or fact
6 common to the Class; the claims of the Representative Plaintiff are typical of the
7 claims of the Class; the Representative Plaintiff has fairly and adequately
8 protected the interests of the Class; questions of law or fact arising in the
9 implementation of the Agreement common to the Class Members predominate
10 over questions of law or fact arising in the implementation of the Agreement
11 affecting only individual Class Members; and certification of the Class for
12 purposes of implementing the Agreement only is superior to other available
13 methods for the fair and efficient administration of the controversy.

14 Specifically, the Court finds that the Representative Plaintiff satisfies all of
15 the applicable criteria for class certification under Federal Rule of Civil Procedure
16 23(b)(3) and the United States Supreme Court's decision in *Amchem Products,*
17 *Inc. v. Windsor*, 521 U.S. 591 (1997), in the context of settlement. The Court
18 finds that the Class Members are so numerous that joinder of all Class Members
19 is impracticable; that common questions of law and fact predominate over
20 questions affecting only individual Class Members; that the Representative
21 Plaintiff's claims are typical of the claims of the Class; that the Representative
22 Plaintiff and his counsel have fairly and adequately represented and protected the
23 interests of all Class Members; and that a class action is superior to other
24 available methods for the fair and efficient adjudication of the controversy.

25 The numerosity requirement is met because the proposed Class comprises
26 over 3 million Members throughout the United States who purchased or leased
27 model year 2007 and earlier Volkswagen and/or Audi vehicles distributed by
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1 Volkswagen of America, Inc. for sale in the United States and which are equipped
2 or furnished with keys or functionally similar devices which lock and unlock any
3 door, hatch or operational system on a vehicle (*e.g.*, ignition, steering, braking,
4 engine management, etc.) in whole or in part through the matching of
5 electronically stored codes or other data strings which are uniquely applicable to a
6 specific vehicle, and it is wholly impracticable, if not impossible, to join
7 individual members of a class of this size and geographic dispersion. *See Fed. R.*
8 *Civ. P. 23(a)(1); Int'l Molders' & Allied Workers' Local Union No. 164 v.*
9 *Nelson*, 102 F.R.D. 457, 461 (N.D. Cal. 1983) (numerosity generally met if the
10 class consists of more than 40 members).

11 The commonality requirement is met because in the absence of class
12 certification and settlement, individual Class Members could be forced to litigate
13 core common issues of law and fact, all relating to disclosures concerning
14 Volkswagen and/or Audi Smart Keys, and the Defendant's alleged common
15 course of conduct in relation to the Members of the Class. *See Fed. R. Civ. P.*
16 *23(a)(2); Hanlon v. Chrysler Corp.*, 150 F. 2d 1011, 1019 (9th Cir. 1998).

17 The typicality requirement is satisfied because the Class Members' claims
18 all arise from the same alleged events and alleged course of conduct and are based
19 on the same legal theory. *See Fed. R. Civ. P. 23(a)(3); In re United Energy Corp.*
20 *Solar Power Modules Tax Shelter Invs. Sec. Litig.*, 122 F.R.D. 251, 256 (C.D.
21 Cal. 1988) ("*United Energy*").

22 The adequacy of representation requirement is met here because the
23 Representative Plaintiff has the same interests as all Members of the Class and is
24 represented by experienced and competent counsel. *See Fed. R. Civ. P. 23(a)(4);*
25 *United Energy*, 122 F.R.D. at 257.

26 The Court further finds that common questions predominate over
27 individual issues in this action. *See Fed. R. Civ. P. 23(b)(3); Hanlon*, 150 F.3d at
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1 1022. The Court also finds that class treatment is superior to other means of
2 resolving the instant dispute, because employing the class device here will
3 conserve the resources of the judicial system and preserve public confidence in
4 the integrity of the system by avoiding the waste and delay of repetitive
5 proceedings and preventing the inconsistent adjudications of similar issues and
6 claims. *See Hanlon*, 150 F.3d at 1023.

7 5. Only 29 of the over 3,002,135 Class Members – 9.6 ten thousandths
8 of a percent (.00096%) of the total Class – have filed objections. These
9 objections to the Settlement have been considered and overruled. Further,
10 consistent with obligations under the Class Action Fairness Act, 28 U.S.C. §1715,
11 “appropriate federal officials” and “appropriate state officials” were notified of
12 the Settlement. Not one of the appropriate federal or state officials has objected.

13 6. Based on the above findings, the Court therefore orders that the
14 Class, as defined in paragraph 8 below, be certified for settlement purposes only
15 under Fed. R. Civ. P. 23, and directs consummation of all terms and provisions of
16 the Agreement. The Court has not determined, and this Order and Final
17 Judgment shall not constitute any finding or determination or evidence that this
18 action could properly have been litigated on behalf of any class.

19 7. Notice has been given to all Class Members known and reasonably
20 identifiable in satisfaction of the requirements of applicable law. The form,
21 content and method of dissemination of notice given to the Class Members as set
22 forth in the Notice and Summary Notice as provided for in the Order
23 Preliminarily Approving Settlement and Notice were adequate and reasonable and
24 constituted the best notice practicable under the circumstances and fully satisfied
25 the requirements of Rule 23 of the Federal Rules of Civil Procedure and due
26 process.

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1 8. The Class is defined as:

2 All current owners of record and/or lessees of model year 2007 and
3 earlier Volkswagen and/or Audi vehicles equipped with vehicle
4 “immobilizer” technology distributed by Volkswagen of America,
5 Inc. for sale in the United States which are equipped or furnished
6 with keys or functionally similar devices needed to enter, start and
7 operate a vehicle through the matching of electronically stored codes
8 or other data strings which are uniquely applicable to a specific
9 vehicle (hereinafter “SMART KEYS”). Excluded from the Class are
10 Defendant’s employees, officers and directors and Defendant’s legal
11 representatives, successors and assigns.

12 9. The action is dismissed with prejudice as to all Class Members who
13 did not request exclusion from the Class in the time and manner provided in the
14 Notice.

15 10. Volkswagen Group of America, Inc., sued hereunder under its
16 former name “Volkswagen of America, Inc.,” Audi of America LLC, AUDI AG,
17 a corporation organized and existing under the law of the Federal Republic of
18 Germany, Volkswagen AG, a corporation organized and existing under the law of
19 the Federal Republic of Germany, their present or former officers, directors,
20 employees, agents, heirs, executors, administrators, successors, reorganized
21 successors, assigns, subsidiaries, affiliates, parent, divisions (including but not
22 limited to “Audi” as herein defined) predecessors and authorized dealers shall be,
23 and the same hereby are, released and discharged from any and all claims, causes
24 of action and liability whatsoever, of every nature and kind whatsoever, known,
25 unknown, suspected or unsuspected, including, but not limited to, any claims for
26 compensatory and exemplary or punitive damages or equitable relief of any
27 nature, that the Representative Plaintiff or any Class Member made or could have
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1 made in this Litigation any and all claims, demands, rights, liabilities and causes
2 of action of every nature and description whatsoever, known or unknown,
3 matured or unmatured, at law or in equity, existing under federal and/or state law,
4 that the Representative Plaintiff and/or any Class Member has or may have
5 against the Released Persons arising out of or related in any way to disclosures
6 regarding any original or replacement Smart Key, but do not include any claims
7 for personal injury, product defect or malfunction or damage to property.
8 Nothing in this release is intended to extend or limit any obligation of Defendant
9 under the terms of any warranty or under California Vehicle Code §9954.

10 11. Nothing contained in the Agreement or in this Order and Final
11 Judgment shall be deemed an admission or finding of wrongdoing by, or with
12 respect to, any party, nor shall anything contained in the Agreement.

13 12. All Members of the Class who did not duly request exclusion from
14 the Class in the time and manner provided in the Notice are hereby barred,
15 permanently enjoined and restrained from commencing or prosecuting any action,
16 suit, proceeding, claim or cause of action in any jurisdiction or court against
17 Defendant or any of the other entities or persons who are to be discharged as
18 noticed above in paragraph 10 based upon, relating to, or arising out of any of the
19 matters which are discharged and released pursuant to paragraph 10 hereof.

20 13. The claims of the persons who elected to be excluded from the Class
21 in the time and manner provided in the Notice are listed on the Schedule of
22 Persons Electing to be Excluded from the Class attached hereto as Exhibit A.

23 14. If the Effective Date of the Settlement, as defined in the Agreement,
24 does not occur for any reasons whatsoever, this Order and Final Judgement shall
25 be deemed vacated and shall have no force and effect whatsoever.

26 15. The Court will separately rule and enter judgment on the issues of
27 attorneys' fees, costs, interest and expenses and incentive award to the
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1 Representative Plaintiff, Jacob Glasser, and shall separately enter judgment on
2 such issues, in accordance with this Court's Order entered September 22, 2008
3 (Docket No. 58) herein.

4 16. Without affecting the finality of the Order and Final Judgment in any
5 way, the Court reserves continuing and exclusive jurisdiction over the Parties,
6 including all Members of the Class as defined above, and the execution,
7 consummation, administration and enforcement of the terms of the Agreement
8 and the award of attorneys' fees, costs, interest and expenses and the award of
9 reasonable costs and expenses to the Representative Plaintiff pursuant to the
10 Agreement and any other matter related or ancillary to the foregoing.

11 17. The Court finds that during the course of the Litigation, the Parties
12 and their respective counsel at all times complied with the requirements of Rule
13 11 of the Federal Rules of Civil Procedure.

14 18. The Court finds, pursuant to Rule 54(b), Fed. R. Civ. P., that there is
15 no just reason for delay, and accordingly directs the Clerk to enter this Order and
16 Final Judgment forthwith, which shall constitute a final determination of all

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1 issues in this action other than attorneys' fees, costs, interest and expenses and the
2 award of reasonable costs and expenses to the Representative Plaintiff.

3 **IT IS SO ORDERED.**

4 DATED: October 06, 2008



5 **HONORABLE AUDREY B. COLLINS**
6 **UNITED STATES DISTRICT COURT JUDGE**

7 Respectfully Submitted by:

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EXHIBIT A

1 *Glasser v. Volkswagen of America, Inc.*,
2 Case No. CV06-2562 ABC (JTLx)
Order and Final Judgment - Exhibit A

3 SCHEDULE OF PERSONS ELECTING
4 TO BE EXCLUDED FROM THE CLASS

1. Raul Abuchaibe
- 5 2. Antoinette Lynne Alfaro
3. Julia Babson Alling
- 6 4. Jonathan Bridges
5. J.H. Burks
- 7 6. Veronica Creek
7. Evelyn Davis-Frazier
- 8 8. Harold F. and Carol Dreyer
9. Shirley D. Dugan
- 9 10. David A. Gallo
11. Jonathan Gaskamp
- 10 12. Louise Anita Ham
13. Mary Ann Henry
- 11 14. Caron L. Kline
15. Rodolfo Llobet
- 12 16. Daniel Michael Malmgren
17. Eric S. Martin
- 13 18. Kelli McIntyre
19. Stephen E. and Barbara R. Mouring
- 14 20. Phillip Neale
21. Douglas G. Noble
- 15 22. Mike Orlin
23. Polly Pureheart
- 16 24. Rick Saban
25. Diane Sacks
- 17 26. Timothy P. Scanlan
27. Carol Siedelmann
- 18 28. James R. Smith
29. Lewis F. Staples
- 19 30. Reginald A. Thatcher
- 20 31. Cathy A. White